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IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

No. 743

GEORGE LEVINE,

Petitioner,

versus

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR REHEARING OF AN ORDER DENYING PETITION FOR WRIT OF CERTIORARI

NICHOLAS J. CAPUANO of
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Miami, Florida 33130
Attorneys for Petitioner

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PETITION FOR REHEARING

Your petitioner, George Levine, respectfully requests this court to grant a rehearing of the Petition for a Writ of Certiorari herein on the following grounds.

Your petitioner respectfully suggests the Court in denying the Petitioner's motion to waive timeliness failed to consider all of the aspects of his motion as follows:

1. That on November 2, 1964, the Petition for Rehearing filed in behalf of your petitioner in the United States Court of Appeals for the Fifth Circuit was denied.

2. After moving for a stay of mandate and requesting a certified record to be provided your petitioner. On November 19, 1964, your petitioner through his counsel received a certified record that was incomplete. A letter was written to the clerk of said court advising him of the condition of the record, which also stated that December 9 was the deadline for filing the Petition for Writ of Certiorari with this court.

3. On November 30, 1964, after various phone calls, counsel for your petitioner forwarded to the clerk of the United States Court of Appeals for the Fifth Circuit his copy of the transcript to be used in making up the certified record. This letter also referred to December 9 as the time for filing Petition for Writ of Certiorari with the clerk of this court.

4. The clerk of the United States Court of Appeals for the Fifth Circuit never questioned December 9, 1964, as being the filing date for the Petition for Writ of Certiorari and never attempted to correct counsel for your petitioner, this is shown by the letter of December 1, 1964, from the Clerk of the United States Court of Appeals for the Fifth Circuit to the Clerk of this court and attached to your petitioner's original petition to waive timeliness.

5. That the wording of the order staying the mandate entered by the United States Court of Appeals for the Fifth Circuit is so written that your petitioner and his counsel were of the opinion that December 9, 1964, was the correct filing date for the Petition for Writ of Certiorari with this court.

That the matters and things argued in the Petition for Writ of Certiorari exhibit a clear violation of the consti-

tutional rights of your petitioner, that the government in its reply did not deny the existence, of the facts, and the truth thereof. That such statements as set forth deprived your petitioner from consideration of his cause by a fair and impartial judge and is the type of error that this court should investigate. That this court has a wide discretion in the matter of timeliness and that this is an instance where timeliness should be waived.

Wherefore your petitioner respectfully requests that this court grant your petitioner a rehearing in this cause.

Respectfully submitted,

NICHOLAS J. SAPUANO
Attorney for Petitioner
19 West Flagler Street
Miami, Florida

STATE OF FLORIDA)
COUNTY OF DADE) ss.

NICHOLAS J. CAPUANO, being first duly sworn, deposes and says: That he is of counsel for the petitioner in the above entitled cause and that he has this ..... day of ....., 1965, mailed a true copy of the foregoing Petition for Rehearing to the following: ARCHIBALD COX, Solicitor General of the United States, Washington, D. C. That this Petition is in good faith and not for delay and is restricted to the grounds stated herein.

Sworn to and subscribed

before me this ..... day

of ....., 1965.

Notary Public, State of Florida

My Commission expires: